

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Rural LECs)	
)	
Petition for Declaratory Ruling with)	
Respect to Obligation of Local Exchange)	
Carriers to Execute Primary Interexchange)	
Carrier Change Requests with Incorrect)	
Subscriber Information)	CC Docket No. 94-129

REPLY OF AT&T INC.

AT&T Inc. (“AT&T”), on behalf of its interexchange carrier affiliates, hereby files this opposition to the Application for Review filed by the Rural LECs.¹ AT&T fully agrees with the Consumer and Governmental Affairs Bureau’s (“Bureau”) denial² of the Rural LECs’ Petition for Declaratory Ruling,³ wherein the Bureau concluded that LECs are prohibited under the Commission’s carrier change verification rules from rejecting carrier change requests submitted by IXCs where the name or telephone number on the request differs from that on file with the LEC.

By way of background, the Rural LECs filed a Petition for Declaratory Ruling asking the Commission to declare that LECs can, consistent with the carrier change verification rules, reject IXC carrier change requests in instances where the name or number in the request does not match the subscriber of record or the person authorized to transact business on the account. The Bureau correctly denied the Petition, relying heavily on the Commission’s *Second Report and*

¹ *Application for Review of the Rural LECs*, CC Docket No. 94-129 (filed June 8, 2005).

² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Declaratory Ruling, CC Docket No. 94-129 (June 9, 2005) (“*Bureau Order*”).

³ *Petition for Declaratory Ruling*, CC Docket No. 94-129, filed Feb.1, 2005, by 3 Rivers Telephone *et al.*

*Order*⁴ as the justification for the denial. Therein, the Commission defined the obligations for executing and submitting carriers. In adopting the carrier change verification rules, the Commission expressly recognized that it had to balance two important public interest goals: (1) protecting consumers from unauthorized carrier changes and (2) protecting carriers from anticompetitive conduct by executing carriers.⁵ While re-verification by LECs could deter slamming, the Commission concluded that such re-verification could also produce anticompetitive effects, such as delayed carrier changes or *de facto* preferred carrier freezes.⁶ On balance, the Commission concluded that its existing verification requirements for submitting carriers, coupled with the availability of PIC freezes, are sufficient to deter slamming, and thus prohibited executing LECs from engaging in any independent verification of a submitting carrier's change request.⁷

Applying these standards, the Bureau correctly concluded that the Rural LECs practice of rejecting IXC PIC change requests where the name or address submitted does not match the information on file constitutes an independent determination with respect to the ability of a person to make a carrier change, and thus violates the Commission's prohibition on verification by executing carriers.⁸ The Rural LECs now ask the Commission to reconsider the Bureau's determination.

⁴ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Second Report and Order*).

⁵ *Id.* at 1568.

⁶ *Id.* at 1568-69.

⁷ *Id.*

⁸ *Bureau Order* ¶10.

The Rural LECs first argue that the Bureau misunderstood the Petition.⁹ The Rural LECs claim that they are not seeking the right to determine if the person making the carrier change request is unauthorized, but rather to refuse carrier changes for their subscribers without prior indication from the subscriber that the requestor is authorized to make the change. Such a distinction, if there is one, is immaterial. No matter how you couch it, the Rural LECs are requesting the right to independently determine if their customer authorized a carrier change. Likewise, the Rural LECs arguments regarding agency are unavailing. Subscribers can, consistent with agency law and the Commission's rules, authorize third parties to act on their behalf for the purpose of making a carrier change and can do so without informing the executing LEC.

The Rural LECs next argue that the Bureau ignored pertinent case law in evaluating the Petition.¹⁰ Specifically, they claim that in *AT&T v. FCC*,¹¹ the D.C. Circuit found it unreasonable to expect IXCs to determine if the person ordering the change is authorized to do so, and further recognized that LECs may have the records to confirm who is in fact authorized to make changes to the account.¹² But that decision in no way alters the Commission's existing verification rules, which the Bureau is charged with interpreting. The decision in *AT&T* was case-specific and *only* vacated the forfeiture penalties at issue in that case.¹³ Until the Commission affirmatively acts to change its verification rules, executing carriers cannot verify

⁹ *Application for Review* at 3-4.

¹⁰ *Id.* at 5-6.

¹¹ *AT&T Corp. v. Federal Communications Commission*, 323 F.3d 1081 (D.C. Cir. 2003).

¹² *Id.*

¹³ *Id.* at 1087-88 ("...we grant the petition for review and vacate the forfeiture penalties associated with the Ortega and Patterson accounts.").

whether the person listed on the submitting carrier's change request is authorized to make the change.

The Rural LECs then claim that their actions do not constitute "verification" under the Commission's rules.¹⁴ According to the Petitioners, they do not interact with the subscriber to determine if the subscriber desires to make a PIC change, which they claim is required under all the "verification methods" set forth in the Commission's rules. The Petitioners, however, ignore the fact that all of the verification methods require the submitting carrier to confirm the identity of the subscriber and that the person making the change is authorized to do so.¹⁵ For example, for third party verifications, the verifier must elicit "the identity of the subscriber" and "confirm[] that the person on the call is authorized to make the carrier change." This is precisely what the Rural LECs are attempting to do here – to verify that the person listed on the submitting carrier's request is authorized to make the carrier change. Thus, their actions fall squarely within the scope of the Commission's verification rules.

Finally, the Rural LECs claim that their actions do not represent "*de facto*" preferred carrier freezes.¹⁶ The Petitioners fail to recognize that when they reject a request for improper billing name and address("BNA") information, they are in fact restricting the customer's ability to make decisions on his/her account. Generally, when the Rural LECs reject a PIC-change request because the name or number does not match, they send back a rejection notice stating that the error was with BNA information. Often this is insufficient to enable the IXC to rectify

¹⁴ *Application for Review* at 7.

¹⁵ See 47 CFR 64.1120(c)(1-3). Each of these verification methods require the submitting carrier to confirm the requestor's identity and ability to make the requested change. For example, for a written carrier change request, the subscriber must provide its billing name and address and a signature as authentication.

¹⁶ *Application for Review* at 7.

the problem. The IXC is then tasked with reconfirming the BNA information in the request and resubmitting it, only to have the LEC reject the request all over again for the exact same reason – incorrect BNA. The fact is customers often use different names for billing purposes, or may authorize a spouse, a roommate, or other associate to act on their behalf and this information may not reside in the LEC’s files. Where there is such a mismatch, and the LEC rejects the order, the customer has to contact the LEC directly to confirm that the change is authorized — which s/he has to do whenever there is a freeze on the account — otherwise the customer’s request will not be effectuated. The resulting undue delay or denial of the carrier change is, as the Commission previously concluded in the *Second Report and Order*, clearly not in the interest of customers.

CONCLUSION

For the foregoing reasons, the Commission should deny the Rural LECs Application for Review and affirm the Bureau’s Declaratory Ruling.

Respectfully Submitted,

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